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CASE NO. _____

SUPREME COURT
OF THE UNITED STATES

NOVEMBER TERM, 1986

IN RE MARTHA B. GAUNCE,

Petitioner.

MARTHA B. GAUNCE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent;

MARTHA B. GAUNCE,

Petitioner,

v.

PIERRE H. DE VINCENTIS and JACK T. PARRISH,

Respondents;

MARTHA B. GAUNCE,

Petitioner,

v.

JAMES E. BURNETT, JR., and DONALD D. ENGEN,

Respondents.

PETITION FOR WRIT OF MANDAMUS

OR, IN THE ALTERNATIVE,

WRIT OF CERTIORARI

[28 U.S.C. § 1651]

Prepared by:
Martha B. Gaunce
P.O. Box 21736
Long Beach, California 90801

In Propria Persona

May 18, 1986

Joseph F. Spaniol, Jr., Esq.
Clerk of Court
Supreme Court of the United States
1 First Street, N.E.
Washington, D. C. 20543

Re: In re Martha B. Gaunce;
Gaunce v. United States;
Gaunce v. Burnett, et al.;
Gaunce v. deVincentis, et al.

Dear Mr. Spaniol:

As attorney for Martha B. Gaunce in the above-captioned matters, kindly enter the appearance of:

MARTHA B. GAUNCE

appearing before this Court, in propria persona.

Sincerely,

Martha B Gaunce

Martha B. Gaunce
P.O. Box 21736
Long Beach, CA 90801

In Propria Persona

QUESTIONS PRESENTED FOR REVIEW

1. Has the United States Court of Appeals for the Ninth Circuit so far departed from the accepted and usual course of judicial proceedures, and so far sanctioned such a departure by the court below and administrative agencies, as to call for an exercise of the Court's power of supervision?

2. Is trial by jury, pursuant to the United States Constitution, article 3, section 2, clause 3; the seventh amendment; and 49 USC § 1473, to be made available in the district court to any appellant of a civil penalty sanction issued by the federal government?

3. As the decision of the circuit court upon which petitioner relied differs significantly from the published opinion, United States v. Gaunce, 779 F.2d 1434 (9th Cir. 1986) upon which this or any other Court may rely, is this egregious misconduct sufficiently exceptional as to warrant the

exercise of this Court's discretionary powers, in view of the fact that adequate relief cannot be had in any other form or from any other court, and the granting of the writ, pursuant to 28 USC § 1651, will be in aid of this Court's appellate jurisdiction?

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Cir. 1982), 104 S.Ct. 2118, reversed and remanded, 466 U.S. 789, cited on page 33;

Cuneo v. Schlesinger, 1973, 484 F.2d 1086, 157 U.S.App.D.C. 368, cert. denied, 94 S.Ct. 1564, 415 US 977, 39 L.Ed2d 873, cited on page 27;

Gaunce v. Burnett, CA9 85-5995, C.D. Cal. 84-2390-RMT, cited on pages 8, 12, 17, 18 and 25;

Gaunce v. deVincentis, CA9 84-5910, C.D. Cal. 84-7214-RMT, cited on pages 18, 19, 20, and 28; Memorandum on 62;

Gaunce v. National Transportation Safety Board, CA9 82-7543, S.Ct. 84-640, cited on pages 21, 22, 23, 24, 26 & 28;

Gaunce v. McGrath, CA9 83-6175, C.D. Cal. 83-3433-FW, cited on pages 22, 24, and 26;

Gaunce v. St. Paul Mercury Insurance Co., CA6 85-1577, E.D. Mich. 84-8194-FL, cited on page 27;

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Lightenburger v. United States, 1969, 298 F.Supp 813, reversed on other grounds (CA9 Cal) 469 F.2d 391, cert. denied, 409 US 983, 34 L.Ed2d 248, 93 S.Ct. 323, cited on page 32;

United States v. Bradley, 540 F.Supp 690 (1982), cited on page 32;

United States v. Ruffin, 613 F.2d at 412, 413-14, cited on page 32.

SUPREME COURT
OF THE UNITED STATES

IN RE MARTHA B. GAUNCE,

Petitioner.

MARTHA B. GAUNCE, Petitioner, v. UNITED STATES OF AMERICA, Respondent;	CA9 84-6307 DC# 84-2637-HLH Central California
MARTHA B. GAUNCE, Petitioner, v. PIERRE H. DE VINCENTIS and JACK T. PARRISH, Respondents;	CA9 84-5910 DC# 83-7214-RMT Central California S.Ct. 83-531 CA7 81-1769 DC# 80C6417 N.D. Illinois
MARTHA B. GAUNCE, Petitioner, v. JAMES E. BURNETT, JR., and DONALD D. ENGEN, Respondents.	CA9 85-5995 DC# 84-2390-RMT Central California

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PETITION FOR WRIT OF MANDAMUS
or, In the Alternative,
WRIT OF CERTIORARI

PETITION FOR WRIT OF MANDAMUS

[28 U.S.C. § 1651]

COMES NOW the petitioner, Martha B. Gaunce, and respectfully petitions this Court for a writ of mandamus, or, in the alternative, for a writ of certiorari to require the United States Court of Appeals for the Ninth Circuit to comply with the rules of this Court and (1) produce the initial decision in United States v. Gaunce by purported filing of January 7, 1986 wherein remand to the administrative agency was to be had providing petitioner with district court intercession on her behalf when necessary to administrative adjudicate the action at law initiated by the government in the district court, pursuant to 49 U.S.C. § 1471(a), for the recovery of a civil penalty, and (2) to require the circuit court to order the administrative agencies, the National Transportation Safety Board [hereinafter NTSB] and the Federal

Aviation Administration [hereinafter FAA], to produce the entire airman file of this petitioner and FAA Order No. 1600.20A, as demanded in her Complaint, Gaunce v. Burnett, cited in the caption, filed in the district court, that the further proceedings may be had according to law.

REASONS FOR GRANTING THE WRIT

It appearing to petitioner that the United States Court of Appeals for the Ninth Circuit is acting in collusion with the administrative agencies, the NTSB and the FAA, and the Office of the Attorney General, Department of Justice, to perpetrate a fraud upon this petitioner as a result of which she has been denied trial by jury, she believes it is only this Court by use of its power of supervision [28 U.S.C. § 1651] and congressional mandate [49 U.S.C. § 1473(b)(4)] may provide petitioner with the due process of law thus far denied her in the proceedings had in the administrative agencies, the NTSB and the

FAA, in the district court, and in the circuit court in the actions at law cited in the captions.

The initial decision of the circuit court granted her remand to the administrative agency (undesignated) for adjudication of the civil penalty sanction for alleged violation of an agency (FAA) regulation. In her answer to the complaint filed in the district court, then on appeal in the circuit court, petitioner had demanded trial by jury, pursuant to 49 U.S.C. § 1473. After responding to the initial decision by filing on January 17, 1986 her Petition for Rehearing dated January 14, 1986, petitioner misplaced her copy of the initial decision, went to the law library, and discovered that the initial decision to which she had responded differed significantly from the Slip Opinion now published as 779 F.2d 1434.

Petitioner has made inquiry of each recipient of her Petition for Rehearing to

which was attached the initial decision she had received, that she might document in this Court the initial decision, as required by Rule 21(k)(i). Neither the initial decision nor her Petition for Rehearing are to be found in the Court File in San Francisco, and none of the recipients of her Petition for Rehearing has been willing to provide her with a copy of the attached initial decision she had provided to each of them.

Petitioner believes this circumstance to be sufficiently extraordinary to warrant the exercise of this Court's power of supervision. Petitioner seeks the intercession of this Court on her behalf as the writ of mandamus will issue in aid of the Court's appellate jurisdiction, and at issue is a constitutional and statutory right to trial by jury.

Petitioner responded to an opinion of the circuit court which, without this Court's

intercession, will not otherwise be before this Court for consideration. Further, the published opinion is a clearly erroneous conclusion of law, and it is based upon innumerable misrepresentations of fact. Petitioner believes it to be mandatory that this Court consider whether the court below has so seriously departed from the proper statutory and legal standards as to impart the appearance of malicious prosecution of this petitioner.

Relief by writ of mandamus is directed towards Judges Wallace, Hug, and Hall; and Clerk of Court Cathy Catterson, all of whom were recipients of the Petition for Rehearing filed by this petitioner, and all of whom have refused to provide her with a copy of the Petition for Rehearing as she requested of each of them in turn.

Petitioner further believes that a writ of mandamus directed to the court below is appropriate that the district court be

directed to order the NTSB and the FAA to produce the documentation in their files, pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552 and 552a (Gaunce v. Burnett, cited in the caption), upon which all parties rely to prove the allegations of violation of agency regulation(s) and misrepresentation of material fact. It is unconscionable that the courts below have so perverted statutory requirements by requiring petitioner to bear the burden of proof of all allegations when the proof lies in the possession of the respondents.

Wherefore, the said petitioner, the aid of this honorable Court respectfully requesting, prays:

That a writ of mandamus be issued out of this honorable Court directing and commanding the Honorable Judge Wallace, the Honorable Judge Hug, and the Honorable Judge Hall, Circuit Judges of the United States Court of Appeals for the Ninth Circuit, to vacate the

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instant petition is more analogous to a motion than to an initial pleading and the time modification requested would conform with the practice of the Court in the case of motions as provided in paragraph 4 of Rule 35.

LIST OF ALL PARTIES

The Honorable J. Clifford Wallace, Circuit Judge;

The Honorable Proctor Hug, Jr., Circuit Judge;

The Honorable Cynthia Hall, Circuit Judge;

James E. Burnett, Jr., Chairman, National Transportation Safety Board;

Donald D. Engen, Administrator, Federal Aviation Administration;

Cathy Catterson, Clerk of Court, United States Court of Appeals, 9th Circuit;

Jack T. Parrish (Retired), FAA;

Pierre H. deVincentis, Esq.

OFFICIAL AND UNOFFICIAL REPORTS

United States of America v. Martha B. Gaunce, 779 F.2d 1434; CCH 19 Avi 18, 094;

Martha B. Gaunce v. Pierre H. deVincentis, 708 F.2d 1290; CCH 17 Avi 18,402;

Martha B. Gaunce v. NTSB, 732 F.2d 163, 105 S.Ct. 498, cert. denied, 466 US 955; NTSB No. EA-1805 and 1828; 3 NTSB 3370;

Martha B. Gaunce v. J. Paul McGrath and Robert E. Kopp, C.D. Cal. 83-3433, CA9 84-6175 (1983), is undocumented.

JURISDICTION

Jurisdiction of this Court is invoked in Gaunce v. United States pursuant to 28 U.S.C. § 1254(1); the date of the judgment sought to be reviewed being January 7, 1986; petition for rehearing being denied dated January 28, 1986; notice of appeal filing dated March 7, 1986 in the court below.

Jurisdiction of this Court is invoked in Gaunce v. deVincentis pursuant to 28 U.S.C. § 1254(1); the date of the judgment sought

to be reviewed being December 27, 1985, petition for rehearing being denied dated January 21, 1985; notice of appeal filing dated February 12, 1986.

Extension of time within which to file appeal in this Court of the two above-cited cases was granted by Order of Justice Rehnquist (A-722) on March 24, 1986.

Jurisdiction of this Court is invoked in Gaunce v. Burnett pursuant to 28 U.S.C. § 1651, the date of interlocutory decree sought to be reviewed being August 30, 1985.

Petitioner believes 28 U.S.C. §§ 2101(c) and (e) to be applicable to the above-cited cases with regard to time limitations, and she believes her appeal to be timely.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS WHICH THE CASES INVOLVE

1. United States Constitution, article 3, section 2, clause 3;

2. United States Constitution, amendments

5, 6, 7, and 14, sections 1 and 5;

3. 49 U.S.C. §§ 1471, 1473, 1481, 1487(b) 1488, and 1429;

4. 5 U.S.C. §§ 552, 552a, 556, 557 and 558;

5. 14 C.F.R. §§ 13.15, 13.16, and 13.19.

STATEMENT OF THE CASE

Gaunce v. Burnett was initiated in the United States District Court for the Central District of California, pursuant to 28 U.S.C. §§ 1331, 2201-2202, and 5 U.S.C. §§ 702 and 704. The complaint alleged denial of a Freedom of Information Act (FOIA) request to see and copy the entire record of this petitioner, and FAA Order No. 1600.20A, documents stated by the court in its decision to be in the possession of the FAA; also, denial of an FOIA request to see and copy all information in her name or aircraft in the possession of the NTSB. No reference is made in the decision to this request.

Gaunce v. deVincentis was initiated in

the United States District Court for the Northern District of Illinois, appealed to the United States Court of Appeals for the Seventh Circuit, then to this Court (104 S.Ct. 417, cert. denied, 466 US 955).

The Seventh Circuit stated in its decision that administrative review is required prior to judicial review. The court also admonished this petitioner stating that jurisdiction must be addressed pursuant to local rule. Be it noted that her Jurisdictional Summary appeared on page 2 of her Brief for Appellant.

Petitioner refiled Gaunce v. deVincentis in the United States District Court for the Central District of California, pursuant to 28 U.S.C. §§ 1331 and 1332, as original (emphasis added) jurisdiction of all (emphasis added) civil actions arising under the Constitution between citizens of different States is to the district court.

United States of America v. Martha B. Gaunce was filed April 13, 1984 by the

government in the district court, pursuant to 28 U.S.C. §§ 1345 and 1355, and 49 U.S.C. § 1471(a). Petitioner believes 49 U.S.C. § 1473 to be applicable on appeal to the district court, that § 1471 applies to proceedings at the administrative agency level; further, that venue lies where the allegation of violation arose; further, that administrative agency proceedings are required prior to initiation in the district court, i.e., that the government failed to exhaust its administrative remedies -- as stated in her answer to the complaint. The circuit court relies on notice and hearing had (purportedly) in the certificate action, which this petitioner refutes in Gaunce v. deVincentis, cited in the caption.

It appears to petitioner that the government is willing to go to any lengths to deny this petitioner any semblance of constitutional or statutory guarantees.

This petitioner filed a motion to dismiss or, in the alternative, for summary judgment by filing of May 1, 1984, on the grounds of failure to exhaust administrative remedies, (United States v. Gaunce, C.D. Cal. 84-2637-HLH) and failure to state a claim upon which relief may be granted contending (1) that there had been no demand made for compliance with a regulation, (2) that administrative agency proceedings are required by 49 U.S.C. § 1481, and (3) that "if the FAA wants money from a pilot for violation of one (or more) of its regulations, it is required to ask the pilot for it, before requiring the pilot to defend an action in a court of law". Her motion was denied.

Thereupon, she filed an answer to the complaint in which she demanded trial by jury. The government contended that administrative and judicial proceedings were final in Gaunce v. NTSB, S.Ct. #84-640 then pending, and no administrative proceedings

were required; and that this Court had denied stay of mandate. Petitioner maintained that stay of mandate pertained to Gaunce v. McGrath, C.D. Cal. 83-3433-FW, CA9 83-6175. The government then, in purported to be ex parte proceedings to which this petitioner was not a party and of which no documentation exists, entered of record a document purporting to indicate that the stay of mandate pertained to Gaunce v. NTSB, accepted by the Clerk of Court subsequent to six revisions on October 23, 1984 by docketing date of May 24, 1984.

The government motion for summary judgment was granted on August 28, 1984 without hearing in which petitioner (or the government) might object or respond regarding the authenticity or veracity of the document.

Petitioner attempted to file in this Court a Petition for Writ of Error in this regard, as received by the Clerk of Court May 11, 1985, but it was returned to her.

Petitioner has consistently contended that she is entitled to trial by jury -- after the adjudication within the agency is finalized by a "final order". She views a "final order" as a piece of paper on which reliance is determined according to law. She based her contention on 49 U.S.C. § 1473. She has since been apprised of the existence of article 3, clause 2, section 3 of the United States Constitution; the sixth amendment, the seventh amendment, and the Constitutions of every State within the borders of which she has resided. This statement is not intended as sarcasm, it's fact; she didn't feel the necessity of doing research in this vein previously. In this brief she finds it necessary to refute conclusions of law apposite to these cited laws.

As stated to this Court in her petition for writ of certiorari in Gaunce v. NTSB, #84-640, and in Gaunce v. State of Idaho, #84-8629, jurisdictional statement, she

is being railroaded by the FAA with the complicity of the NTSB; she now adds to the list the Ninth Circuit. See, Motion for Extension of Time from which Order No. A-722 derived.

Petitioner believes that among the many considerations requiring address by this Court at this time, there are the following:

1. FAA personnel appeared as attorneys of record for the government in Gaunce v. NTSB, CA 9 82-7543. It appeared to petitioner that 28 U.S.C. § 547 was applicable, requiring the United States attorney to so appear. Motion for Change of Attorney of Record was filed and denied; thereupon, she filed Gaunce v. McGrath, C.D. Cal. 83-3433-FW, CA9 83-6175. In the district court proceedings the government was represented by an attorney not of record in that court as required by local rule. The defendants were J. Paul McGrath, Assistant Attorney General of the United States, and

Robert E. Kopp, Director, Appellate Division, Civil Section, Department of Justice, Washington, D. C. The appeal in the circuit court was dismissed on motion for summary judgment filed by the government, represented by Leonard Schaitman, Assistant Director, Appellate Division, Civil Section, Department of Justice, Washington, D.C. The signatures on the Motion for Summary Affirmance were subsequently discovered by this petitioner to be other than Mr. Schaitman's.

Petitioner filed an appeal of Gaunce v. Burnett, cited in the caption, in the circuit court and filed a motion for summary reversal prior to filing of briefs on behalf of either party to the action. Her FOIA case motion was denied, despite FOIA requirements to expedite such actions and produce government files relevant to court actions in process. The material facts upon which petitioner relies remain ensconced in FAA and NTSB files not yet made available to her.

REASONS FOR GRANTING OF WRIT

1. The United States Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be, settled in this Court.

2. This case is of imperative public importance as to justify the deviation from normal appellate practice and to require immediate settlement in this Court.

3. There is no relief to be had in any other court or in any other manner of administrative or judicial proceedings.

4. The United States Court of Appeals for the Ninth Circuit has rendered a (published) decision in conflict with its own previously rendered decision(s) on the same subject matter.

Introduction

Petitioner believes the three actions at law cited in the caption to be related to Gaunce v. NTSB, #84-640 in this Court; Gaunce v. McGrath, CA9 83-6175 and untimely

in this Court; Gaunce v. St. Paul Mercury Insurance Company, CA6 85-1577, pending decision; and all other actions at law filed between Gaunce and the FAA. She believes the production of the record in her name and aircraft to be requisite to consideration of the facts. The Freedom of Information Act, 5 U.S.C. §§ 552 and 552a, provides that information which either creates or provides a way of determining the extent of substantive rights and liabilities constitutes a form of law which cannot, under the public access of records section of the Freedom of Information Act, be withheld from the public. Cuneo v. Schlesinger, 1973, 484 F.2d 1086, 157 U.S.App.D.C. 368, cert. denied, 94 S.Ct. 1564, 415 U.S. 977, 39 L.Ed2d 873.

ARGUMENT

The action at law from which arose the action filed in the district court as United States v. Gaunce, cited in the caption, was

stated in the petition for writ of certiorari in Gaunce v. NTSB, #84-640, to be: [T]he result of a fabrication of fiction from a web of pure fantasy by government officials intent on railroading this petitioner. The FAA is required by 49 U.S.C. § 1429(a) as implemented in 14 C.F.R. § 13.19 to provide notice and hearing of alleged violation (emphasis supplied) of its regulation. Gaunce v. deVincentis, cited in the caption, was initiated in the district court and documents the denial of due process as required by 49 U.S.C. § 1429(a) and 14 C.F.R. § 13.19. Petitioner contends that notice and hearing are required to be conducted pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 556, 557, and 558, as stated in 49 U.S.C. § 1481. No hearing took place; deVincentis was not an employee of the FAA, as deemed admitted in both district courts in which this action at law was initiated (N.D. Ill. and C.D.

Cal.), no response to petitioner's Request For Admission, pursuant to FRCP 36(b), having been made. Further, deVincentis' signature is shown on the face (presumably) of the Order of Revocation, the final order issued by the Administrator, without the required by law (14 C.F.R. § 13.19) authority to do so.

Appeal to the NTSB was taken, pursuant to 49 U.S.C. § 1903(a)(9):

> "(a) The Board shall --
>
> (9) review on appeal (emphasis supplied)
>
> (A) the ... revocation ... of any operating certificate or license issued by the Secretary of Transportation under §§ 1422, 1429, ..."

It is the contention of this petitioner that review is not the same as original jurisdiction of proceedings, and, in fact, no discovery was provided this petitioner on the pretext that it would be provided at the hearing.

The order of revocation issued by the FAA was reduced to a suspension of 150 days by the NTSB, and appealed to the Ninth Circuit which raised (emphasis added) the suspension to 180 days.

Appearing for the government in the circuit court were FAA personnel. Petitioner vigorously protested by filing suit for declaratory judgment in the district court contending that the United States attorney shall prosecute or defend for the government all civil actions in which the United States is concerned, pursuant to 28 U.S.C. § 547(2). 49 U.S.C. § 1988 provides that upon request of the Attorney General the Administrator shall have the right to participate (emphasis supplied) in any proceeding in court, and this leave to participate has somehow become construed as the right to prosecute -- not the same at all.

The instant action at law under review in the circuit court, United States v.

Gaunce, is summarized in 779 F.2d 1434, as follows:

> "1. Appeal from summary judgment for the government in an action to recover a civil penalty under 49 U.S.C. § 1471(a)(1). Affirmed."

It is the contention of petitioner that the implementing regulation, 14 C.F.R. § 13.15 (e) requires instigation of proceedings in a United States District Court under § 903 of the FA Act (49 U.S.C. § 1473), to collect the penalty.

It is the contention of petitioner that 49 U.S.C. § 1471(a)(1), as implemented in 14 C.F.R. § 13.15, is applicable to administrative proceedings wherein notice and hearing are had, pursuant to 5 U.S.C. §§ 556, 557, and 558. There is no documentation, no evidence whatsoever, to indicate that administrative proceedings were initiated by notice, were had be either formal or informal hearing. There is no scrap of

paper to indicate so much as a telephone call, no more than a hint to indicate that that sanction of a civil penalty was contemplated, much less considered to be levied against this petitioner.

The United States Constitution, article 3, section 2, clause 3 provides that "[t]he trial of all Crimes ... shall be by jury; and such Trial shall be held in the State where the said Crimes shall have been committed..." Violation of a safety regulation promulgated by the FAA is negligence per se. Lightenburger v. United States (1969, D.C. Cal) 298 F.Supp 813, reversed on other grounds (CA9 Cal.) 460 F.2d 391, cert. denied, 409 US 983, 34 L.Ed2d 248, 93 S.Ct. 323. Trial is to be held in the district in which the crime occurs. United States v. Bradley, 540 F. Supp 690 (1982), 49 U.S.C.A. § 1473. The key to venue is the definition of the crime charged. E.g., United States v. Ruffin, 613 F.2d at 412, 413-14.

"2. Appellant was not entitled to a jury trial pursuant to the provisions of 49 U.S.C. § 1471(b)(1) because she raised no genuine issue of material fact."

The United States Constitution, amendment 7, states that:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

It is the contention of the petitioner that the court below, having been reversed on this point cited in Amaro v. Continental Can Co., 724 F.2d 747, 749 (9th Cir. 1984), but reversed in the underlying suit, Taxpayers for Vincent v. Members of City Council, 682 F.2d 847, 848-49 (9th Cir.

1982), 104 S.Ct. 2118, reversed and remanded, 466 U.S. 789, may reasonably be presumed to have been apprised of this fact by 1986. It is not the material facts in dispute or lack thereof that are predicated upon the requirement for trial by jury but the amount in controversy, when in excess of $20. The amount in controversy in this action, a civil penalty sanction of $1,000, is the determinant factor.

> "3. No administrative assessment was required by 49 U.S.C. § 1471(a)(1) because her penalty was issued for violation of regulations promulgated under subchapter VI, which is not within the purview of § 1471(a)(1)."

It is an outrage to so pervert the law relevant to the filed complaint. Administrative notice and hearing is required by 49 U.S.C. § 1481, restating 5 U.S.C. §§ 556, 557, and 558, when violation of regulations is alleged, pursuant to 49 U.S.C.

§§ 1429 or 1471. Trial by jury is mandated, pursuant to 49 U.S.C. § 1473, when the amount in controversy exceeds $20. To conclude otherwise is arbitrary and capricious, clearly erroneous, and a denial of due process of law guaranteed by amendments 5 and 14 to the United States Constitution.

CONCLUSION

Pursuant to 49 U.S.C. § 1473, petitioner is entitled to a trial by jury of all facts material to the inquiry as the amount in controversy exceeds $20. The sanction of either a civil penalty or certificate action by the FAA requires administrative notice and hearing pursuant to 49 U.S.C. § 1481 and the derivative legislation, 5 U.S.C. §§ 556, 557, and 558.

Sanction of a civil penalty by the FAA has not been, but should be, settled in this Court. As evidenced in the instant action, Gaunce v. United States, the FAA has so far departed from acceptable compliance with the

mandate of Congress, its enabling legislation, the Federal Aviation Act of 1958, and has acquired the complicity of the agency, the NTSB, mandated by Congress to review the actions of the FAA, and now the Ninth Circuit, mandated by its enabling legislation to review the actions of both of these agencies, has entered into the conspiracy to deny to this petitioner adjudication in unlawful disregard of the sacred tenets and basic principles guaranteed by the United States Constitution. These manipulations of acceptable legal standards are an outrage. This petitioner is livid; it is to be hoped she is lucid.

Petitioner prays this Court to provide her with due process of law that resolution of the continuing victimization of this petitioner cease, once and for all.

Respectfully submitted,

Martha B Gaunce

MARTHA B. GAUNCE

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

United States Constitution, amendment V:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States Constitution, amendment VII:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury, shall

be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

United States Constitution, article 3, section 2, clause 3:

The Trial of all Crimes, except in Cases of Impeachment, shall be by jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by law have directed.

United States Constitution, amendment XIV, section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property; without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

United States Constitution, amendment XIV, section 5:

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

United States Constitution, amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

28 U.S.C. § 1651(a):

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principals of law.

28 U.S.C. § 1254(1):

Cases in the courts of appeals may be reviewed by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree...

49 U.S.C. § 1471:

(a)(1) Any person who violates (A) any provision of subchapter III, IV, V, VI, VII, or XII of this chapter or of section 1514 of this title or any rule, regulation, or order issued thereunder, or under section 1482(i) of this title, or any term, condition, or limitation of any permit or certificate

issued under subchapter IV of this chapter, or (B) any rule or regulation issued by the Postmaster General under this chapter, shall be subject to a civil penalty of not to exceed $1,000 for each such violation, except that the amount of such civil penalty shall not exceed $10,000 for each such violation which relates to the transportation of hazardous materials. If such violation is a continuing one, each day of such violation shall constitute a separate offense. The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior offenses, ability to pay,

effect on ability to continue to do business, and such other matters as justice may require. This subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of subchapters III, V, VI, or XII of this chapter, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of subchapters IV or VII of this chapter, or any rule, regulation, or order issued thereunder, or under

section 1482(i) of this title, or any term, condition, or limitation of any permit or certificate issued under subchapter IV of this chapter, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(b) In case an aircraft is involved in such violation and the violations is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: Provided, That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General.

49 U.S.C. § 1473:

(a) The trial of any offense under this Act shall be in the district in which such

offense is committed; or if the offense is committed upon the high seas, or out of the jurisdiction of any particular State or district, the trial shall be in the district where the offender may be found or into which he shall first be brought. Whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in the same manner as if the offense had been actually and wholly committed therein.

(b)(1) Any civil penalty imposed or assessed under this chapter may be collected by proceedings in personam against the person subject to the penalty and, in case the penalty is a lien, by proceedings in rem against the aircraft, or by either method alone. Such proceedings shall conform as nearly as may be to civil suits in admiralty, except that with respect to proceedings involving penalties other than those assessed by the Board, either party may demand trial

by jury of any issue of fact, if the value in controversy exceeds $20, and the facts so tried shall not be reexamined other than in accordance with the rules of the common law. The fact that in a libel in rem the seizure is made at a place not upon the high seas or navigable waters of the United States shall not be held in any way to limit the requirement of the conformity of the proceedings to civil suits in rem in admiralty.

* * *

(b)(4) The Supreme Court of the United States, and under its direction other courts of the United States, may prescribe rules regulating such proceedings in any particular not provided by law.

49 U.S.C. § 1481:

The Board and the Administrator, subject to the provisions of this chapter and the Administrative Procedure Act, may conduct

their proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice. No member of the Board or Administration shall participate in any hearing or proceeding in which he has a pecuniary interest. Any person may appear before the Board or Administration and be heard in person or by attorney. The Board, in its discretion, may enter its appearance and participate as an interested party in any proceeding conducted by the Administrator under subchapter VI of this chapter from which no appeal is provided to the Board. Every vote and official act of the Board and the Administration shall be entered of record, and the proceedings thereof shall be open to the public upon request of any interested party, unless the Board or the Administrator determines that secrecy is requisite on ground of national defense.

49 U.S.C. § 1488:

Upon request of the Attorney General, the Board or Administrator, as the case may be, shall have the right to participate in any proceeding in court under the provisions of this chapter.

14 C.F.R. § 13.15:

(a) Under section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471), a person who violates any provision of Title III, V, VI, or XII of that Act, or any regulation or order issued under one of those titles, is subject to a civil penalty of not more than $1,000 for each violation.

(b) The Administrator may compromise any civil penalty. If a civil penalty is contemplated and it is considered advisable to compromise it, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Aeronautical Center Counsel (as to matters under Title V of the FA

Act), or the Regional Councel concerned sends a letter to the person charged with the violation, advising him of the charges against him and the law, regulation, or order that he is charged with violating, and offering to compromise the penalty. The person charged with the violation may present, to the official who signed the letter, any oral or written material or information in answer to the charges, explaining, mitigating, or denying the violation or showing extenuating circumstances. Material or information so presented is considered in making the final determination as to probable liability for a civil penalty, or the amount for which it will be compromised.

(c) If the person charged with the violation offers to compromise for a specific amount, he shall send a certified check or money order for that amount, payable to the Federal Aviation Administration. The Chief

Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Aeronautical Center Counsel (as to matters under Title V of the FA Act), or the Regional Counsel concerned may accept or refuse it.

(d) If the compromise amount is accepted, the person charged with the violation is notified, by letter, that the acceptance is full settlement of the civil penalty for the violation.

(e) If a compromise settlement of the civil penalty cannot be made, the Administrator may instigate proceedings in a United States District Court, under section 903 of the FA Act (49 U.S.C. 1473), to collect the penalty.

14 C.F.R. § 13.16 (in part):

(a) Section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809) provides for civil penalties, for persons who knowingly commit acts that are

violations of that Act, or of any regulation issued under it, of not more than $10,000 for each violation.

(b) The authority under section 110 of the Hazardous Materials Transportation Act to initiate, compromise, and assess civil penalties, and refer cases to the United States Attorney General for collection of such civil penalties for violations of that Act, or of regulations dealing with transportation or shipment of hazardous materials by air issued under that Act, as delegated to the Administrator, has been redelegated to the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, and to each Regional Counsel.

(c) The redelegation in paragraph (b) of this section is in addition to the authority to take civil penalty action under § 13.15 of this part with respect to violations of the Federal Aviation Act of 1958, and regulations, or orders issued under that Act,

involving transportation or shipment of hazardous materials, as delegated to the Administrator.

(d) ... Within 30 days after the service of the notice, the person charged with a violation may—

* * *

(4) Request a hearing in accordance with Subpart D of this part.

* * *

(h) Either party may appeal from the Hearing Officer's decision to the Administrator by filing a notice of appeal within 20 days after the date of the decision and serving a copy on the other party ...

* * *

(k) If the person charged with the violation does not request a hearing in accordance with Subpart D of this part, and does not pay the amount of the civil penalty proposed to be assessed, or an amount agreed

upon, the official who issued the notice of proposed civil penalty (EMPHASIS ADDED) issues an order assessing a civil penalty (EMPHASIS ADDED) in an amount the official determines to be appropriate or takes such other action as may be appropriate. This official does not assess an amount greater than the amount proposed in the notice of proposed civil penalty (EMPHASIS ADDED) ...

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States of America, No. 84-6307

Plaintiff-Appellee, DC# 84-2637-HLH

v. Central California

Martha B. Gaunce,

Defendant-Appellant.

Summary of Opinion filed January 7, 1986

Appeal from summary judgment for the government in an action to recover a civil penalty under 49 U.S.C. § 1471(a)(1). Affirmed.

Appellant violated federal aviation regulations and after notice and an informal conference, the Federal Aviation Administration (FAA) issued an "Order of Revocation" directing her to surrender her commercial pilot certificate. After an administrative appeal and a previous appeal to this Court, the FAA demanded that appellant surrender her certificate and the government brought suit to recover the civil penalty.

[1] Appellant was not entitled to a jury trial pursuant to the provisions of 49 U.S.C. § 1473(b)(1) because she has raised no genuine issue of material fact. [2] Because appellant raised no objection in the district court regarding the selection of the judge to hear the case, she is barred from raising the issue for the first time on appeal. [3] No administrative assessment was required by 49 U.S.C. § 1471(a)(1) because her penalty was issued for violation of regulations promulgated under subchapter

VI, which is not within the purview of § 1471(a)(1).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARTHA B. GAUNCE No. 84-6307

Defendant/Appellant, DC#CV 84-2637-HLH

v.

UNITED STATES OF AMERICA OPINION

Plaintiff/Appellee.

Before: WALLACE, HUG, and HALL
Circuit Judges

WALLACE, Circuit Judge:

A.

In a suit to impose a civil penalty under 49 U.S.C. § 1471, "either party may demand trial by jury of any issue of fact, if the value in controversy exceed $20." 49 U.S.C. § 1473(b)(1). Gaunce contends that by issuing summary judgment against her the district court denied her this statutory right to jury trial. However, Gaunce has alleged no triable issue of

fact. Her initial violations, upon which suspension of her certificate was founded, have already been established in proceedings that culminated in our first decision and denial of certiorari by the Supreme Court. Gaunce, No. 82-7543, appeal dismissed and cert. denied, 105 S. Ct. 498 (1984). The only factual questions for purposes of the present action against Gaunce are whether the FAA actually demanded that she surrender her certificate and whether she nevertheless failed to surrender it. Gaunce admits that she received the October 14, 1983 letter directing her to turn over the certificate. She does not dispute her noncompliance with this letter. Thus, the facts necessary to establish liability under section 1471 were undisputed, and the district court properly granted summary judgment against Gaunce on the issue of liability. See United States v. Duffy, 550 F.2d 533, 534 (9th Cir. 1977)

(per curiam).

Gaunce appears to argue that she raised a disputed question of fact with respect to whether the penalty requested by the government and imposed by the court was in an appropriate amount. We have held that this is a question of law rather than of fact. Id. Because she raised no genuine issue of material fact, Gaunce was not entitled to a jury trial. Id.

The government brought suit against Gaunce to recover a $1,000 civil penalty under 49 U.S.C. § 1471(a)(1). Finding no genuine issue of material fact, the district court awarded summary judgment to the government. We have jurisdiction over Gaunce's appeal pursuant to 28 U.S.C. § 1291, and we affirm.

I

Gaunce, who holds a Federal Aviation Administration (FAA) pilot certificate, violated federal aviation regulations in

July 1979 while acting as pilot-in-command of a civil aircraft. In 1980, after notice and an informal conference, the FAA issued an "Order of Revocation" directing Gaunce to surrender her commercial pilot certificate. Gaunce appealed to the National Transportation Safety Board (Board), which affirmed the FAA's findings of regulatory violations. Rather than ordering revocation of Gaunce's certificate, however, the Board imposed the lesser sanction of a 150-day suspension*. The Board order required Gaunce to surrender her certificate to the FAA for the 150-day period. Gaunce refused to surrender the certificate. In October 1982 Gaunce appealed her 150-day suspension to our court. We affirmed the Board order, observing that her appeal was meritless and that the penalty imposed was "lenient." Gaunce v. National Transporta-

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* raised to 180-days by the Ninth Circuit.

tion Safety Board, No. 82-7543 (9th Cir. Feb. 13, 1984)(memorandum disposition), appeal dismissed and cert. denied, 105 S. Ct. 498 (1984)(Gaunce). Meanwhile, on October 14, 1983, the FAA demanded in a letter that Gaunce surrender her certificate or face civil penalties of up to $1,000 per day so long as she refused. Nevertheless, Gaunce still did not surrender her certificate.

Federal Aviation Regulations § 61.19(f) directs that "[t]he holder of any certificate issued under this part that is suspended or revoked shall, upon the Administrator's request, return it to the Administrator." 14 C.F.R. § 61.19(f)(1985)*. This regulation was issued pursuant to subchapter VI of the Federal Aviation Act, which authorizes regulations to govern airman certificates. 49 U.S.C. § 1421(a)(6).

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*1985 is two years subsequent to date of letter (October 14, 1983).

Civil-penalty fines are authorized for violations of regulations issued under subchapter VI. 49 U.S.C. § 1471(a)(1). On April 13, 1984, the government brought this action in federal district court seeking a $1,000 civil penalty from Gaunce and an order that Gaunce surrender her certificate to the FAA. On August 28, 1984, the court entered summary judgment for the government and granted the relief sought.

II

Gaunce raises three arguments on this appeal: that summary judgment denied her the right to a jury trial conferred by 49 U.S.C. § 1473(b)(1), that the district court judge was "arbitrarily" selected to punish her for filing a grievance against another judge, and that the government is required to puruse an administrative assessment of a civil penalty before it could institute this suit against her.

A grant of summary judgment is reviewed

de novo. Lojek v. Thomas, 716 F.2d 675, 677 (9th Cir. 1983)(Lojek). We must determine whether, viewing the evidence in the light most favorable to the opposing party, there is any genuine issue of material fact and whether the substantive law was properly applied. Amaro v. Continental Can Co., 724 F.2d 747, 749 (9th Cir. 1984); Lojek, 716 F.2d at 677.

B.

We conclude that Gaunce is not entitled to argue that a different district judge should have heard her case. She contends that the selection of the district judge was arbitrary and retaliatory. However, Gaunce raised no objection in the district court regarding the selection of the judge to hear her case, and she is barred from raising the issue for the first time on appeal. See Guillory v. County of Orange, 731 F.2d 1379, 1383 (9th Cir. 1984); United

States v. Coleman, 707 F.2d 374, 376 (9th Cir.), cert. denied, 464 U.S. 854 (1983).

C.

Finally, Gaunce contends that the government was required by 49 U.S.C. § 1471(a)(1) to pursue an administrative assessment of the civil penalty before it could institute an action against her pursuant to § 1487(b). She contends that the district court thus lacked jurisdiction to hear the case under 28 U.S.C. §§ 1345, 1355 because the FAA had failed to exhaust the required administrative procedures prior to suit.

Section 1471(a)(1) does not require a prior administrative assessment in this case. Such a procedure is mandated by § 1471(a)(1) in only three instances: (1) if the penalty "relates to the transportation of hazardous materials," (2) if the penalty is imposed for "violation of any provision of subchapter IV of this chapter," which relates to economic regulation of air

carriers, or (3) if the penalty issues for violations under 49 U.S.C. § 1482(i), which governs establishment of through service and joint fares within the states of Alaska and Hawaii and for overseas flights. 49 U.S.C. § 1471(a)(1); see United States v. Kilpatrick, 759 F.2d 1250, 1252-53 (5th Cir. 1985)(Kilpatrick). Because Gaunce's penalty issued for violation of regulations promulgated under subchapter VI, no administrative assessment was required by § 1471 (a)(1). Kilpatrick, 759 F.2d at 1252-53.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARTHA B. GAUNCE, No. 84-5910

Plaintiff/Appellant, DC#CV 84-7214-RMT

v.

PIERRE H. DE VINCENTIS
and JACK T. PARRISH,

Defendant/Appellees. MEMORANDUM

Before: KOELSCH, KENNEDY, and NORRIS

Circuit Judges**

Gaunce v. deVincentis, et al., CA9 84-5910

Memorandum* (Not for Publication)

Filed December 27, 1985

Martha B. Gaunce appeals the district court's order granting the defendants' motion for judgment on the pleadings based on a lack of subject matter jurisdiction. The district court relied on the Federal Aviation Act of 1958 (the Act), which explicitly provides for exclusive, direct review of National Transportation Safety Board (NTSB) orders in the courts of appeals. 49 U.S.C. § 1486(a) and (d).

Gaunce contends that the district court has federal question and diversity juris-

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

** The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a) and Ninth Circuit Rule 3(f).

diction. Her action is against the two Federal Aviation Administration (FAA) employees who participated in her informal conference, for "civil conspiracy to defraud, fraud, and abuse of authority." She argues that she is asserting a constitutional claim that does not challenge the proceedings of the FAA and NTSB, nor the resultant order requiring a 150-day suspension of her airman certificate.

The judgment is affirmed. Gaunce's complaint collaterally attacks the proceedings of the FAA, despite her assertions to the contrary. The district court thus properly determined it lacked subject matter jurisdiction. See Gaunce v. deVincentis and Parrish, 708 F.2d 1290, 1293 (7th Cir.) (per curiam), cert. denied, 104 S. Ct. 417 (1983). Moreover, this court already has reviewed the evidence supporting the initial FAA and final NTSB orders, and Gaunce's related due process challenge. Gaunce v.

National Transportation Safety Board, No. 82-7543 (9th Cir., Feb. 3, 1984)(mem.). Her appeal was deemed meritless. Id.

This court also finds Gaunce's appeal frivolous and awards reasonable attorneys' fees and costs to the appellees. Fed. R. App. P. 38. Gaunce repeatedly has litigated issues relating to the same agency action in this circuit, as well as in the Seventh Circuit. See Gaunce, 708 F.2d 1290; Gaunce, No. 82-7543.[1]

The judgment is AFFIRMED. Reasonable attorneys' fees and costs are awarded to the appellees for a frivolous appeal.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARTHA B. GAUNCE, No. 85-5995

Plaintiff-Appellant, DC#CV 84-2390-RMT

vs. Central California

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[1] This case is suitable for submission without oral argument because the legal standards are clear.

JAMES E. BURNETT, JR.,
Chairman, National Transportation
Safety Board, et al., ORDER

Defendant-Appellees.

Gaunce v. Burnett, CA9 85-5995,

Order filed August 30, 1985

Before: WALLACE and NORRIS
Circuit Judges

Appellant has filed a motion for summary reversal of the district court's order dismissing her suit under the Freedom of Information Act. We find appellant's request is premature because no briefs have been filed in this appeal. See United States v. Hooten, 693 F.2d 857, 858 (9th Cir. 1982)(per curiam). The motion is denied without prejudice to it being renewed upon completion of the briefing schedule.

Gaunce v. Pierre H. deVincentis, CA9 84-5910,

Order filed March 25, 1986

Before: Koelsch, Kennedy, and Norris,
Circuit Judges

Appellee's request for an award of $1,815.00 in attorney fees is granted.

Letter dated August 20, 1984:

Office of the Clerk
Supreme Court of the United States
Washington, D. C. 20543

August 20, 1984

Ms. Martha B. Gaunce
9348 Santa Monica Blvd., #101
Beverly Hills, California 90210

RE: Martha B. Gaunce v. National Transportation Safety Board and Federal Aviation Administration No. A-799

Dear Ms. Gaunce:

The letter of April 30, 1984, which informed you that the application for stay of mandate in the above-entitled case was denied, recited an incorrect lower court case number. The correct U.S. Court of

Appeals for the Ninth Circuit case number is 82-7543.

/s/ Christopher W. Vasil, Deputy Clerk

Gaunce v. J. Paul McGrath and Robert E. Kopp, CA9 83-6175, Order filed December 16, 1983

Before: ANDERSON, TANG and SKOPIL, Circuit Judges

Appellees' motion for summary affirmance is granted.

United States v. Gaunce, CA9 84-6307, Order filed January 8, 1986

Before: WALLACE, Circuit Judge

The opinion filed in this case is not to be published in any bound volume reporter, including the Federal Reporter of West Publishing Company, until further order except that a slip opinion may be circulated.

United States v. Gaunce, CA9 84-6307, Order filed January 29, 1986

Before: WALLACE, Circuit Judge.

The opinion filed in this case on January 7, 1986, may now be published in any volume reporter, including the Federal Reporter of West Publishing Company.

United States v. Gaunce, CA9 84-6307,

Order filed January 28, 1986

Before: WALLACE, HUG, and HALL,
Circuit Judges.

Appellant's petition for rehearing is denied.